

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

File No. 121840-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 10th day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 10, 2011, XXXXX (Petitioner) filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on June 17, 2011.

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) and requested the information it used to make its final adverse determination. The Commissioner received BCBSM's response on October 7, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is BCBSM's *Preferred Rx Program Certificate* (the certificate). *Rider PD-CR \$10.00 Prescription Drug Copayment Requirement* and *Rider PD-BC \$10 Prescription Drug Brand-Name Copayment Requirement \$10* also apply. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

In March 2011 the Petitioner filled a prescription for the drug Papaverine HCL at a nonpanel pharmacy.¹ The pharmacy's charge for the prescription was \$149.00. The Petitioner paid for it and requested reimbursement from BCBSM. BCBSM processed the Petitioner's claim and paid him \$32.99.

The Petitioner appealed BCBSM's payment amount through its internal grievance process. BCBSM held a managerial-level conference on May 26, 2011, and issued a final adverse determination dated June 1, 2011, upholding its determination.

III. ISSUE

Did BCBSM correctly reimburse the Petitioner for the Papaverine HCL prescription?

IV. ANALYSIS

The Petitioner used Viagra and Cialis for seven years to treat his erectile dysfunction but the medications eventually stopped working. His doctor then recommended and prescribed Papaverine HCL injections. Because the pharmacy that filled the prescription "did not deal with any insurance organization," the Petitioner paid the \$149.00 charge himself.

The Petitioner believes BCBSM should pay more than \$32.99 towards the cost of the prescription. He argues that the Papaverine HCL improved his sex life and since BCBSM covered the Viagra and Cialis for ten years it should fully cover Papaverine HCL too. The Petitioner believes that BCBSM is required to reimburse him an additional \$116.01.

It is undisputed that the Petitioner obtained the Papaverine HCL from a nonpanel pharmacy. The certificate (p. 2.2) explains how BCBSM covers prescriptions from nonpanel pharmacies:

When a nonpanel pharmacy fills a prescription for a covered drug, you must pay the pharmacist the full cost of the drug and submit to us a claim form and proof of payment including the National Drug Code (NDC) of the drug dispensed. . . .

For covered drugs in the United States, we will reimburse you 75 percent . . . of the BCBSM approved amount for the drug minus your copayment. [Underlining added]

¹ The certificate defines "nonpanel pharmacy" as "a provider that has not been selected for participation and has not signed an agreement to provide covered drugs through our PPO program. Nonpanel pharmacies have not agreed to accept the approved amount as payment in full for covered drugs or services provided to members."

“Approved amount” is defined as:

The lower of the billed charge or the sum of the drug cost plus the dispensing fee (and incentive fee, if applicable) for a covered drug or service. The drug cost, dispensing fee and incentive fee are set according to our contracts with pharmacies. The approved amount is not reduced by rebates or other credits received directly or indirectly from the drug manufacturer. Copayments that may be required of you are subtracted from the approved amount before we make our payment.

In this case, BCBSM’s approved amount for the Papaverine HCL is \$70.66. That is the amount BCBSM’s contracted (panel) pharmacies have agreed to charge for the drug. Under the terms of the certificate, BCBSM reimburses the Petitioner 75% of its approved amount for the Papaverine HCL, or \$52.99 in this case. (The certificate does not require BCBSM to reimburse 75% of the nonpanel pharmacy’s charge for a drug.)

Also, *Rider PD-CR \$10.00* imposes a \$10.00 prescription drug copayment and *Rider PC-BC \$10* adds an additional \$10.00 copayment when a brand name drug (like Papaverine HCL) is dispensed. Those copayments are applied before BCBSM makes its payment. After deducting the \$20.00 copayment, BCBSM reimbursed the Petitioner \$32.99 ($\$52.99 - \$20.00 = \32.99). No additional reimbursement is required.

The record does not explain why the Petitioner had the prescription filled at a nonpanel pharmacy. If he had used a panel pharmacy, he would have been responsible only for the \$20.00 copayment and BCBSM would have paid its approved amount directly to the pharmacy.

The Commissioner concludes that BCBSM correctly reimbursed the Petitioner for his Papaverine HCL prescription under the terms and conditions of the certificate and riders.

V. ORDER

Blue Cross Blue Shield of Michigan’s final adverse determination of June 1, 2011, is upheld. BCBSM is not required to pay any additional amount for the Petitioner’s Papaverine HCL prescription.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner